

DECLARATION OF RICHARD WINGER IN SUPPORT OF
PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER

I, Richard Winger, being over the age of 18 and competent, declare:

1. My name is Richard Winger. I live in San Francisco, California. If called upon as a witness, I could and would competently testify to the following facts based upon my own personal knowledge or information and belief.

2. I make this Declaration in support of Plaintiffs Nevada Green Party, Dr. Jill Stein, and Julia Hammett's (hereinafter collectively "Plaintiffs") *Application for Temporary Restraining Order and Order to Show Cause re: Preliminary Injunction* (the "Application").

3. I have been recognized as an expert on ballot access in many federal courts, and have testified in several hundred ballot access lawsuits. I have published Ballot Access News, a monthly print newsletter, since 1985.

4. Sometimes the Democratic Party or the Republican Party have failed to strictly adhere to statutory deadlines for submitting the names of their candidates for presidential elector, or deadlines for certifying the names of the presidential and vice-presidential nominees. When this has happened, states have always printed the Democratic and Republican Party's presidential candidates on the November ballot anyway. To my knowledge, states have never required strict adherence to these deadlines when the two major parties have missed the deadlines.

5. To my knowledge, in 1988, the Indiana Republican Party and the Indiana Democratic Party both missed the deadline for certifying their candidates for presidential

elector, but the Indiana election officials still printed the names of George H. W. Bush and Michael Dukakis on the November ballot. Lenora Fulani, the presidential nominee of the New Alliance Party, which was also on the ballot in Indiana that year, did submit her candidates for presidential elector by the deadline. She sued to force Indiana to remove Bush and Dukakis from the November ballot, but even though the Court of Appeals for the Seventh Circuit felt she had standing, it ruled that Bush and Dukakis should remain on the ballot, because of laches. In sum, based on my knowledge of the Indiana election in 1988, the Democratic and Republican Parties were late to submit their electors but still were allowed to place their candidates on the general election ballot.

6. To my knowledge, in 1964, the Iowa Democratic Party missed the deadline to certify the names of its presidential and vice-presidential nominees to the Secretary of State, but he put Lyndon Johnson on the November ballot anyway. A voter sued to remove Johnson, but a state court ruled that Johnson should remain on the ballot.

7. To my knowledge, in 2008, the Texas Republican Party and the Texas Democratic Party both missed the deadline to certify the names of their presidential and vice-presidential candidates for the November ballot, but the Secretary of State listed Barack Obama and John McCain on the general election ballot anyway. Bob Barr, the Libertarian nominee, who was also on the ballot and whose filing had been timely, filed an original Petition for Writ of Mandamus in the Texas Supreme Court to have Obama and McCain removed, but the Texas Supreme Court refused to hear the case. To my knowledge, in the filings made by the Secretary of State, the Secretary acknowledges the accuracy of the Barr Mandamus request but argues that the law is directory, and also that

the public interest required the Secretary of State to act as he did.

8. To my knowledge, in 1996, the Democratic Party of Ohio and Montana missed state deadlines to certify the names of the party's presidential and vice-presidential nominees for the November ballot, but the Secretaries of State of both states listed Bill Clinton anyway. The Democratic national convention did not nominate Clinton until August 30, 1996, which was only 67 days before the November 5, 1996 election. Ohio required the names by 75 days before the general election, and Montana also required the names by 75 days. As far as I know, no litigation resulted.

\|\|

\|\|

9. In 2004, it is somewhat likely that the Florida Republican Party failed to submit its presidential elector candidates by the September 1 deadline, but instead submitted the list on September 2. I read a newspaper article published on the Internet about this issue, located at http://www.sptimes.com/2004/09/11/Decision2004/Did_Bush_camp_err_on_.shtml. I have also searched the Internet for the phrase "Did Bush camp err on ballot papers?", and the search results discuss the issue. According to the article's author, Steve Bousquet, the list of Republican electors on file with the Secretary of State does not show a time stamp indicating when the document was received by the state, although the Democratic list, which was submitted timely, is date stamped. The story quotes Florida Democratic Party chairman Scott Maddox as saying he knew the president's certificate of nomination did not reach the state until September 2, but he said he decided not to make an issue of it. President Bush was not nominated until September 1.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

EXECUTED on August 15, 2016 in San Francisco, California.

/S/ Richard Winger

RICHARD WINGER

Original signature retained by counsel and
can be provided upon request.